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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/062,133 | 01/30/2002 | Yu-Cheun Jou | PA450C1 | 3837 |
| 23696 | 7590 | 06/29/2006 | EXAMINER | |
| QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO, CA 92121 | | | | MEW, KEVIN D |
| | | ART UNIT | | PAPER NUMBER |
| | | 2616 | | |

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/062,133 | JOU, YU-CHEUN | |
| | Examiner | Art Unit | |
| | Kevin Mew | 2616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 April 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 16-22 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 16-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

Final Action

Response to Amendment

1. Applicant's Remarks/Arguments filed on 4/12/2006 regarding claims 16-22 have been considered. Claims 16-22 are currently pending and claims 1-15 have been cancelled by applicant.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. **Claims 16-22** are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-6 of prior U.S. Patent No. 6,389,000. This is a double patenting rejection.

Claim 16 of the instant application recites, a wireless transmitter comprising:

"an encoder for encoding ... a demultiplexer for providing ... to provide modulated first code symbol subset and second code symbol subset" (see Jou, claim 1, col. 11, lines 8-22).

Claim 17 of the instant application recites, the wireless transmitter comprising:

"a transmission subsystem for said modulated first code symbol subset on a first carrier

frequency and said modulated second code symbol subsets on a second carrier frequency” (see Jou, claim 1, col. 11, lines 23-26).

Claim 18 of the instant application recites, the wireless transmitter comprising:

“said first and second modulators repeat code symbol within said first and second code symbol subsets, respectively, according to a said respective code symbol rate” (see Jou, claim 2, col. 11, lines 27-30).

Claim 19 of the instant application recites, the wireless transmitter comprising:

“said transmission subsystem scales a respective energy of said first and second modulated code symbol subsets according to a respective amount of code symbol repetition” (see Jou, claim 3, col. 11, lines 31-34).

Claim 20 of the instant application recites, the wireless transmitter comprising:

“said first modulator includes a first interleaver having a first interleaver format dependent on a first code symbol rate, and said second modulator includes a second interleaver having a second interleaver format dependent on a second code symbol rate” (see Jou, claim 4, col. 11, lines 35-40).

Claim 21 of the instant application recites, the wireless transmitter comprising:

“said first modulator includes a first PN scrambler for scrambling said first code symbol subset according to a first code symbol rate, and said second modulator includes a second PN

scrambler for scrambling said second code symbol subset according to a second code symbol rate” (see Jou, claim 5, col. 11, lines 41-46).

Claim 22 of the instant application recites, a wireless transmitter comprising:

“said transmission subsystem includes a switch for selectively switching said first and second modulated code symbol subsets respectively onto a third carrier frequency” (see Jou, claim 6, col. 11, lines 47-50).

Response to Arguments

3. Applicant's arguments with respect to claims 16-22 have been considered but are moot in view of the double patenting rejection indicated above.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 2616

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Mew whose telephone number is 571-272-3141. The examiner can normally be reached on 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seema S. Rao
SEEMA S. RAO 6/26/06
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Kevin Mew *KM*
Work Group 2616